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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,800	01/12/2006	Mark Bride	65793-5009	5126
24574 7590 03/19/2008 JEFFER, MANGELS, BUTLER & MARMARO, LLP 1900 AVENUE OF THE STARS, 7TH FLOOR LOS ANGELES, CA 90067				
EXAMINER				
BOR, HELENE CATHERINE				
ART UNIT		PAPER NUMBER		
3768				
MAIL DATE		DELIVERY MODE		
03/19/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/564,800

**Applicant(s)**

BRIDE, MARK

**Examiner**

HELENE BOR

**Art Unit**

3768

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 30 August 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-12 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 12 January 2006 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 3/12/08  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Inventor's Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 7 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 7 depends from Claim 2 and Claim 7 contains the scope of Claim 2 in regards to ambient light being present and the filtering of ambient light.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claim 1-2, 5-8 & 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lui'334 et al (US Patent No. 6,021,344; previously cited).

**Claim 1:** Lui'334 teaches the method of screening epithelial tissue for possible abnormal tissue sites (Abstract). Lui'334 teaches the method of illuminating a gross anatomical area or epithelial tissue [diseased site] with a light of preselected wavelengths that selectively aids in visualizing abnormal tissue sites on the gross area (Col. 2, Line 21-25). Lui'334 teaches the method of viewing said gross area through filter lens which transmit light in the preselected wavelengths (Col. 4, Line 40-44). In addition, Lui'334 teaches while substantially blocking transmission of light of wavelengths other than the preselected wavelengths, to enhance the visualization of any of the abnormal tissue sites (Col. 4, Line 44-48) in the presence of ambient light [visible light which is also

called excitation light] (Col. 3, Line 20-28). Lui'334 teaches goggles with filters that block ambient light and only allow the preselected wavelength (Col. 5, Line 14-43) and that imaging occurs during normal ambient lighting conditions (Col. 5, Line 51-55).

**Claim 2:** Lui'334 teaches the method of detecting abnormal epithelial tissue (Abstract). Lui'334 teaches the method of illuminating an area of epithelial tissue with light having at least one preselected wavelength such that the light is reflected from the area and thereby creating reflected light (Col. 2, Line 21-28). Lui'334 teaches the method of filtering the reflected light to substantially remove wavelengths other than the at least one preselected wavelength, thereby creating filtered light (Col. 4, Line 40-44). Lui'334 teaches the method of viewing the filtered light (Col. 3, Line 56-60). Lui'334 teaches goggles with filters that block ambient light and only allow the preselected wavelength (Col. 5, Line 14-43) and that imaging occurs during normal ambient lighting conditions (Col. 5, Line 51-55).

**Claim 5:** Lui'334 teaches the method wherein the at least one preselected wavelength is from about 400 nm to about 600 nm (Col. 3, Line 20-28).

**Claim 6:** Lui'334 teaches the method wherein the abnormal epithelial tissue includes tumor phenotypes (Col. 6, Line 7-35).

**Claim 7:** Lui'334 teaches the method wherein the light further comprises ambient light [visible light/excitation light] and the step of filtering substantially removes ambient light (Col. 4, Line 40-44).

**Claim 10:** Lui'334 teaches the method further comprising providing spectacles (Figure 2, Element 4) having a filter (Figure 2 Element 6 & 7), and wherein the step of filtering the reflected light comprises filtering the reflected light with the spectacles (Col. 3, Line 56-60).

**Claim 11 & 12:** Lui'334 teaches the method wherein the normal illumination source is the light emitted by the lights provided to illuminate the room in which the method is being performed (Col. 5, Line 44-45).

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claim 3-4 & 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lui'334 et al (US Patent No. 6021344) as applied to claim 1-2, 5-7 & 10-12 above, and further in view of Lonkey'983 (US Patent No. 5,329,938) is hereby maintained for the reasons of record.

***Response to Arguments***

6. Applicant's arguments, see Page 8 Part I, filed 11/05/2007, with respect to the Specification have been fully considered and are persuasive. The objection of the Specification has been withdrawn.
7. Applicant's arguments, see Page 8 Part II, filed 11/05/2007, with respect to the Claims have been fully considered and are persuasive. The objection of the Claims has been withdrawn.
8. Applicant's arguments filed 11/05/2007 have been fully considered but they are not persuasive. The Applicant presented the argument that Lui'334

does not teach the lights in the diagnostic room would be turned off or at least significantly dimmed. The Examiner respectfully disagrees. While Lui'334 teaches an embodiment which requires the ambient light off or dimmed, Lui'334 teaches that the intensified viewing apparatus can view the fluorescence images with the ambient light on (Col. 5, Line 51-55). The invention as taught by Lui'334 requires the light be off or dimmed when the user is wearing the glasses as shown in Figure 2. However when using the intensified viewing apparatus, the ambient light images are not acquired (Col. 5, Line 52-54). Furthermore, the Examiner notes that it is within the scope of the claims to provide the dimmed light as the first level and to perform the remaining method steps without further reducing the lighting level, as is taught by Lui'334 (Col. 2, Line 61-64).

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HELENE BOR whose telephone number is (571)272-2947. The examiner can normally be reached on M-T 8:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. B./  
Examiner, Art Unit 3768

/Eric F Winakur/  
Primary Examiner, Art Unit 3768